

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gregory Joss	Team: Team # 1	CCRB Case #: 201204009	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/23/2012 6:45 PM	Location of Incident: Jamaica Avenue and Cleveland Street; Warwick Street and Ridgewood Avenue	Precinct: 75	18 Mo. SOL 9/23/2013	EO SOL 9/23/2013	
Date/Time CV Reported	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/29/2012 1:09 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Joseph Nicosia	02777	949395	PBBN
3. LT Joseph Hayward	00000	923936	PBBN
4. POM Robert Mayer	18638	940441	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM William Bubeck	01297	948709	PBBN
2. POF Anais Villegas	07793	947337	075 PCT
3. POM Stephen Berardi	29456	939914	075 PCT
4. POM Vincenzo Dimartino	19954	944510	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Joseph Hayward	Force: At Jamaica Avenue and Cleveland Street, Lieutenant Joseph Hayward used physical force against § 87(2)(b)	
B.LT Joseph Hayward	Force: At Jamaica Avenue and Cleveland Street, Lieutenant Joseph Hayward used pepper spray against § 87(2)(b)	
C. An officer	Force: At Warwick Street and Ridgewood Avenue, an officer pointed his gun at § 87(2)(b) and § 87(2)(b)	
D. An officer	Force: At Warwick Street and Ridgewood Avenue, an officer used physical force against § 87(2)(b)	
E. An officer	Force: At Warwick Street and Ridgewood Avenue, an officer used physical force against § 87(2)(b)	
F.POM Joseph Nicosia	Force: At Warwick Street and Ridgewood Avenue, Officer Joseph Nicosia used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
G. An officer	Discourtesy: At Warwick Street and Ridgewood Avenue, an officer spoke discourteously to § 87(2)(b) and § 87(2)(b) [REDACTED]	[REDACTED]
H. An officer	Abuse: At Warwick Street and Ridgewood Avenue, an officer threatened § 87(2)(b) and § 87(2)(b) with the use of force.	[REDACTED]
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]

### Case Summary

On March 23, 2012, § 87(2)(b) filed this complaint via telephone with the Internal Affairs Bureau (IAB log # 12-16667) (Encl. 5A-5B). The case was forwarded to the Civilian Complaint Review Board on March 29, 2012 (Encl. 6A-6D). On April 2, 2012, § 87(2)(b) also filed this complaint via telephone with the CCRB on behalf of her § 87(2)(b)-old son, § 87(2)(b). § 87(2)(b) was not present during any part of this incident.

On March 23, 2012 at approximately 6:30 p.m. in the vicinity of Jamaica Avenue and Cleveland Street in Brooklyn, § 87(2)(b) was arrested by PO William Bubeck of Patrol Borough Brooklyn North for § 87(2)(b). § 87(2)(b) § 87(2)(b)'s § 87(2)(b)-old brother, § 87(2)(b) was also arrested by PO Joseph Nicosia of Patrol Borough Brooklyn North, but later released with a summons for § 87(2)(b). The following allegations resulted:

#### **Allegation A: Force – At Jamaica Avenue and Cleveland Street, Lieutenant Joseph Hayward used physical force against § 87(2)(b)**

§ 87(2)(g)

#### **Allegation B: Force – At Jamaica Avenue and Cleveland Street, Lieutenant Joseph Hayward used pepper spray against § 87(2)(b)**

§ 87(2)(g)

#### **Allegation C: Force – At Warwick Street and Ridgewood Avenue, an officer pointed his gun at § 87(2)(b) and § 87(2)(b)**

#### **Allegation D: Force – At Warwick Street and Ridgewood Avenue, an officer used physical force against § 87(2)(b)**

§ 87(2)(g)

#### **Allegation E: Force – At Warwick Street and Ridgewood Avenue, an officer used physical force against § 87(2)(b)**

§ 87(2)(g)

#### **Allegation F: Force – At Warwick Street and Ridgewood Avenue, Officer Joseph Nicosia used physical force against § 87(2)(b)**

§ 87(2)(g)

#### **Allegation G: Discourtesy – At Warwick Street and Ridgewood Avenue, an officer spoke discourteously to § 87(2)(b) and § 87(2)(b)**

#### **Allegation H: Abuse of Authority – At Warwick Street and Ridgewood Avenue, an officer threatened § 87(2)(b) and § 87(2)(b) with the use of force.**

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

## Results of Investigation

### Civilian Statements

#### Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of this incident. He is a Hispanic man with black hair and brown eyes. He is 5'7" tall and weighs 120 pounds. § 87(2)(b)

#### Arrest Photo

A request for the arrest photo of § 87(2)(b) yielded negative results.

#### CCRB Statement

On May 3, 2012, § 87(2)(b) was interviewed at the CCRB (Encl. 7A-7G). On § 87(2)(b), § 87(2)(b) and § 87(2)(b) filed a Notice of Claim against the City of New York. (Encl. 37A-37U). On § 87(2)(b), § 87(2)(b) provided 50-h Hearing testimony with regard to this incident (Encl. 9A-9AQ). On April 2, 2013, § 87(2)(b) provided additional information when he came to the CCRB to view photos. § 87(2)(g)

On March 23, 2012 at approximately 6:45 p.m., § 87(2)(b) his brother § 87(2)(b) and their friend § 87(2)(b) were walking home from school when they witnessed several police officers arresting two young males, identified by the CCRB as § 87(2)(b) and § 87(2)(b) in the vicinity of Cleveland Street and Jamaica Avenue in Brooklyn. § 87(2)(b) told the CCRB that he did not know the circumstances of the arrest, § 87(2)(a) Gen.Mun. §50-H(3)

There were approximately two to three unmarked vehicles, four to five marked vehicles, and approximately 10 police officers at the location, approximately four of which were in plainclothes. There was also a crowd of approximately 40 civilians at the location, one of whom was identified as § 87(2)(b)'s friend, § 87(2)(b) who was recording the incident.

§ 87(2)(b) and § 87(2)(b) walked across the street and stood on the corner and observed the officers affecting the arrests of the individuals from a distance of approximately 10-15 feet. § 87(2)(b) began recording the incident on his cell phone. § 87(2)(b) did not make any comments to the officers, nor did § 87(2)(b) or § 87(2)(b)

No one in the crowd was yelling at the officers or trying to interfere with the arrests. None of the officers at the location were engaging with the crowd or issuing the crowd any directives. § 87(2)(b) and § 87(2)(b) observed the officers for approximately one to two minutes before an officer in a white uniformed shirt, identified by the CCRB through investigation as Lt. Joseph Hayward of Patrol Borough Brooklyn North, approached them and said, "Get off the corner." § 87(2)(b) and § 87(2)(b) complied immediately and walked away.

Lt. Hayward was described as a white male, approximately 5'7" tall, a little heavy set, with blondish hair, and in his 30s to 40s. § 87(2)(b) described another officer, identified by the CCRB through investigation as PO Anaïs Villegas of the 75<sup>th</sup> Precinct, as a Hispanic female with light brown skin, approximately 5'5" to 5'6" tall, heavy set, and with long black hair. A third officer, identified by the CCRB through investigation as PO William Bubeck of Patrol Borough Brooklyn North, was described as a white male, approximately 5'9" tall, thin build, and with blond hair.

Lt. Hayward followed § 87(2)(b) and pushed him from behind with both hands causing § 87(2)(b) to almost trip. § 87(2)(b) kept walking away, but Lt. Hayward pushed him from behind a second time. § 87(2)(b) believed that Lt. Hayward was trying to knock him down. § 87(2)(b) was in the middle of the street at this point and turned toward Lt. Hayward. Lt. Hayward, without saying anything, pulled out his pepper-spray. § 87(2)(b) said to the crowd in a low tone, "I'm only § 87(2)(b) why is he going to mace me?" Lt. Hayward then "blasted" § 87(2)(b) in the face twice with the pepper-spray from a distance of approximately two feet.

After being pepper-sprayed by Lt. Hayward, § 87(2)(b) ran from the location and Lt. Hayward pursued him. § 87(2)(b) just remembered hearing yelling and his name being called. § 87(2)(b) could not identify who was calling his name. § 87(2)(b) ran down Cleveland Street, made a right on Ridgewood Avenue, a right on Ashford Street, a left on Jamaica Avenue, and then a left on Warwick Street. At some point, § 87(2)(b) caught up with § 87(2)(b) and helped him along because § 87(2)(b)'s eyes were burning and he was coughing from the mace.

On Warwick Street, between Arlington Avenue and Ridgewood Avenue, an unmarked dark silver sedan with tinted windows, occupied by two unidentified plainclothes officers pulled up alongside of § 87(2)(b) and § 87(2)(b). Additional marked police vehicles and officers on foot also responded to Warwick Street.

The officer driving the vehicle, while seated in the vehicle, pointed his gun out of the window at § 87(2)(b) and § 87(2)(b) and told them to get on the ground. The officer then exited the car, holstered his gun, tackled § 87(2)(b) to the ground, and handcuffed him. § 87(2)(b) did not describe how he was tackled. This officer was described as a white male, approximately 6'0" tall, muscular build, in his 30s, and wearing a hat. His partner was described as a white male, approximately 5'8" to 5'9" tall, with blondish hair, in his 30s, and wearing a sweatshirt.

§ 87(2)(b) did not see who handcuffed § 87(2)(b) or how he was handcuffed. However, § 87(2)(b) later learned from § 87(2)(b) that while § 87(2)(b) was standing handcuffed against a marked police car, a plain clothed officer slapped him in the face. § 87(2)(b) did not witness his brother, § 87(2)(b) get arrested or observe him at all on Warwick Street.

While he was on the ground a uniformed officer, identified by name and through the CCRB investigation as PO Joseph Nicosia, walked up to § 87(2)(b) and, without saying anything, kicked § 87(2)(b) on his left shoulder. [The Notice of Claim filed by § 87(2)(b) states that he was also kicked in the face.] PO Nicosia was described as a Hispanic male, approximately 5'8" to 5'9" tall, with an average build.

§ 87(2)(b) was then put in a police vehicle and transported to the 75<sup>th</sup> Precinct stationhouse by the officer that pointed his gun at him and his partner. Before leaving for the stationhouse, the officer that pointed his gun at § 87(2)(b) stuck his hand in § 87(2)(b)'s face and told him, "This is what I fucking do for you, you stupid ass kids. If my fucking finger is broken, I'm going to smack you across the face and fuck you up." § 87(2)(b) asked the officer why he was cursing at him and the officer replied, "Don't worry about it." § 87(2)(b) asked the officer to please call his mother to which the officer replied, "Tell your mother she can suck my dick." § 87(2)(b) remained silent for the remainder of the ride. § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

At the stationhouse, § 87(2)(b) stated that he was put in the juvenile center and handcuffed to a bench. § 87(2)(b) saw PO Nicosia and accused him of kicking him. PO Nicosia said, "Yeah it was me. I was trying to kick you across the face." § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b) complained to any officer that walked by to please wash off his face, but stated he was ignored. § 87(2)(b) did not indicate where in the stationhouse he was when he made this request and did not provide any identifying information for the officers he asked. However, on April 2, 2013, when § 87(2)(b) appeared at the CCRB to view photos, he stated that he asked PO Nicosia specifically. § 87(2)(b) stated that he was released from the stationhouse at approximately 12:00 a.m. § 87(2)(b) was charged with § 87(2)(b), but stated that the charge was dropped. § 87(2)(b) did not seek any medical treatment as a result of this incident. [In his Notice of Claim, § 87(2)(b) stated that he had a bruise on his left shoulder.]

§ 87(2)(b) reviewed the YouTube video that was taken by § 87(2)(b) § 87(2)(b) identified the black male in the red shirt that was being arrested and put into a marked RMP by Lt. Hayward as § 87(2)(b) § 87(2)(b) identified himself in the video as the male in the red shirt with the hat that gets maced by Lt. Hayward. § 87(2)(b) identified § 87(2)(b) as the individual with the striped sweater.

### **Photo Viewing**

On April 2, 2013, § 87(2)(b) appeared at the CCRB to view photos of potential subject officers (Encl. 8A-8M).

§ 87(2)(b) viewed photos of Officers David Grieco, Robert Mayer, Vincenzo DiMartino, Stephen Berardi, Keith Drummond, Joseph Armenio and Michael Demonda. All of these officers are white males and were assigned to either Anti-Crime or Conditions in the 75<sup>th</sup> Precinct at the time of the incident.

§ 87(2)(b) stated that PO Mayer looked familiar from the incident date, but could not specify as to what he observed PO Mayer do. § 87(2)(b) stated PO Drummond looked familiar, but was not sure if it was from the incident date. § 87(2)(b) did not recognize any other officers from the incident as the officer who cursed at him or threatened him with force.

§ 87(2)(b) also viewed photos of Lt. Joseph Hayward and Officers Anais Villegas, Alicia Barrett, Joseph Nicosia, and William Bubeck.

§ 87(2)(b) positively identified PO Nicosia as the officer that kicked him and Lt. Hayward as the officer that pepper-sprayed him. He also stated that PO Villegas looked familiar.

### **Witness:** § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of this incident. He is a Hispanic man with brown hair and brown eyes. He is 5'8" tall and weighs 120 pounds. § 87(2)(b)

### **CCRB Statement**

On May 3, 2012, § 87(2)(b) was interviewed at the CCRB (Encl. 10A-10F). On § 87(2)(b), § 87(2)(b) and § 87(2)(b) filed a Notice of Claim against the City of New York (Encl. 37A-37U). On § 87(2)(b), § 87(2)(b) provided 50-h Hearing testimony with regard to this incident (Encl. 11A-11AL). § 87(2)(g)

On March 23, 2012 at approximately 6:45pm, § 87(2)(b) his brother § 87(2)(b) and their friend § 87(2)(b) were in Highland Park, in the vicinity of Cleveland Street and Jamaica Avenue in Brooklyn, when they saw several police officers arresting individuals. They decided to walk in that direction § 87(2)(b)

There were approximately 10 officers, some in uniform and some in plain clothes, and an unknown number of police vehicles, some marked and some unmarked. There was a crowd of more than 20 civilians at the location. A friend of § 87(2)(b)s, identified by the CCRB through investigation as § 87(2)(b) was at the location.

After observing from the park for less than 30 minutes, § 87(2)(b) and § 87(2)(b) walked across the street from the park to the corner where the officers were affecting arrests. § 87(2)(b) and § 87(2)(b) had not interacted with any officers at this point and did not direct any comments toward any officers. § 87(2)(b) and § 87(2)(b) were sitting on the corner in front of a house, approximately six to seven feet away from the officers for about one minute. § 87(2)(b) began recording the officers on his cell phone. During this time, § 87(2)(b) and § 87(2)(b) did not make any comments toward the officers.

An officer wearing a white uniformed shirt, who was identified by the CCRB through investigation as Lt. Joseph Hayward of Patrol Borough Brooklyn North, approached them and ordered them to get off the corner. Lt. Hayward was described as a light skinned white man, approximately 5'5" tall, average build, with blond hair and in his 40s.

As they were walking away, Lt. Hayward pushed § 87(2)(b) from behind. Lt. Hayward then pushed § 87(2)(b) a second time, very forcefully, from behind. At this point § 87(2)(b) and Lt. Hayward were in the street. After the second push, § 87(2)(b) said something to Lt. Hayward, but § 87(2)(b) did not hear what he said. § 87(2)(b) was approximately 10 feet from his brother and Lt. Hayward at this point.

Lt. Hayward, from a distance of two to three feet, discharged his pepper-spray at § 87(2)(b). § 87(2)(b) could not be sure how many times Lt. Hayward discharged the pepper-spray. § 87(2)(b) then ran from the location while being chased by Lt. Hayward, and § 87(2)(b) followed. § 87(2)(b) followed them for a bit, but stopped to call his mother, § 87(2)(b). § 87(2)(b) indicated that in addition to Lt. Hayward, numerous officers, both uniformed and plain clothes, pursued § 87(2)(b) and § 87(2)(b).

By the time § 87(2)(b) arrived on the corner of Ridgewood Avenue and Warwick Street, § 87(2)(b) and § 87(2)(b) were already handcuffed and on the ground. § 87(2)(b) could not see what was happening with them because they were too far down the block on Warwick Street, but stated there were numerous officers at the location.

An unidentified uniformed officer approached § 87(2)(b) on foot and ordered him to get on the ground. § 87(2)(b) complied and was handcuffed by the officer. The officer was described as a white male, approximately 5'7" tall, average build, and in his 30s.

After § 87(2)(b) was handcuffed, § 87(2)(b) who was also handcuffed, was brought up the block and placed next to him against a marked RMP. § 87(2)(b)s face was red and he had scratches on his ear. An officer searched § 87(2)(b)s pockets. § 87(2)(b) did not know which officer searched him and could not describe him other than that he was in uniform. An unidentified plainclothes officer searched § 87(2)(b) and cursed at him. The officer told § 87(2)(b) "If I broke my finger I'm going to fuck you up and punch you in the face." § 87(2)(a) Gen. Mun. § 87(2)(b) This officer was described as a white male, approximately 5'10" to 5'11" tall, muscular build, possibly bald, and in his early 30s.

At the stationhouse, § 87(2)(b) was lined up next to § 87(2)(b) still in handcuffs, and had his wallet removed from his pocket. § 87(2)(b)s face was very red and he was complaining that his face burned and that his arms hurt.

§ 87(2)(b) reviewed the YouTube videos taken by § 87(2)(b) and § 87(2)(b). § 87(2)(b) could not identify any civilians in the video other than himself, § 87(2)(b) and § 87(2)(b). He confirmed that the officer in the white uniform was the officer that maced § 87(2)(b).

On April 2, 2013, § 87(2)(b) was scheduled to appear at the CCRB to view photos of potential subject officers, but he failed to make the appointment.

**Complainant:** § 87(2)(b)

- § 87(2)(b) a Hispanic female, was § 87(2)(b) old at the time of this incident. § 87(2)(b) is the mother of § 87(2)(b) and § 87(2)(b)

**50-h Hearing Testimony**

§ 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Attempts to Contact Civilians**

Between April 9, 2012 and May 22, 2012, the CCRB attempted to contact complainant § 87(2)(b) five times via telephone and left a voicemail message each time. On April 9, 2012 and April 19, 2012, please call letters were mailed to § 87(2)(b) but both were returned to the CCRB by the United States Postal Service. A LexisNexis search confirmed § 87(2)(b)'s mailing address and a third please call letter was sent to § 87(2)(b) which was not returned to the CCRB by the USPS. According to a search of the New York City Department of Correction website conducted on June 10, 2013, § 87(2)(b) is not currently incarcerated.

On May 22, 2012, contact was established with § 87(2)(b) via telephone. He confirmed his contact information and was scheduled to appear at the CCRB on May 29, 2012. However, § 87(2)(b) did not appear for his scheduled appointment and did not contact the CCRB to cancel or reschedule. On May 29, 2012, a missed appointment letter was sent to § 87(2)(b) and was not returned to the CCRB by the USPS. On June 5, 2012, contact was established with § 87(2)(b) via telephone. He was scheduled to appear at the CCRB on June 11, 2012, but again, he did not make his appointment and did not contact the agency to cancel or reschedule. According to a search of the New York City Department of Correction website conducted on June 10, 2013, § 87(2)(b) is not currently incarcerated.

On June 28, 2012, contact was established with § 87(2)(b) via telephone. He confirmed his contact information and was scheduled to appear at the CCRB on July 11, 2012. However, § 87(2)(b) failed to appear for his appointment and did not contact the CCRB to cancel or reschedule. On July 12, 2012, a missed appointment letter was sent to § 87(2)(b) and was not returned to the CCRB by the USPS. On July 17, 2012, contact was established with § 87(2)(b) via telephone. § 87(2)(b) was scheduled to appear at the CCRB on July 30, 2012, but again, § 87(2)(b) did not make his appointment and did not contact the agency to cancel or reschedule. According to a search of the New York City Department of Correction website conducted on June 10, 2013, § 87(2)(b) is not currently incarcerated.

On September 11, 2012 and March 28, 2013 please call letters were sent to § 87(2)(b) who was arrested during this incident, and were not returned to the CCRB by the USPS. On March 28, 2013, the CCRB attempted to contact § 87(2)(b) via telephone using the number listed in the command log, but the number was not in service. According to a search of the New York City Department of Correction website conducted on June 10, 2013, § 87(2)(b) is not currently incarcerated.

On March 28, 2013, contact was established with § 87(2)(b) who was arrested during this incident, via telephone. § 87(2)(b) claimed to have no recollection of this incident.



### **Video Footage**

Two videos of this incident, taken by § 87(2)(b) and § 87(2)(b) via cell phone, were posted on YouTube. The following is a summary of the two videos.

The videos show a large group of individuals gathered at Jamaica Avenue and Cleveland Street in Brooklyn. At least five individuals can be seen wearing red articles of clothing. Three officers, identified as PO Nicosia, PO Bubeck, and Lt. Hayward, are trying to effect the arrests of several individuals. § 87(2)(b) can be seen wearing a red sweatshirt and in police custody standing next to a marked RMP. PO Nicosia and PO Bubeck can be seen handcuffing an individual who is face down on the sidewalk. An unidentified woman in the background screams, “Is this on the news? About cops fucking up little kids?”

Lt. Hayward is attempting to clear § 87(2)(b) and § 87(2)(b) off of the corner of Jamaica Avenue and Cleveland Street. Lt. Hayward can be heard yelling, “Get off the corner now.” Individuals in the background can be heard saying, “Get the hammers.” Another unidentified individual states, “I live here.”

§ 87(2)(b) who is also wearing a red sweatshirt, has his hands at his sides near his waist area. Upon being told to leave by Lt. Hayward, § 87(2)(b) walks away immediately, but § 87(2)(b) pauses and continues to watch the two young men on the ground being arrested. Lt. Hayward pushes § 87(2)(b) from behind with two hands around the right shoulder area. As § 87(2)(b) begins to walk away from the corner, Lt. Hayward pushes him a second time, from behind, propelling him approximately five feet into the street.

§ 87(2)(b) stands in the street and turns to face Lt. Hayward. § 87(2)(b) is standing with his hands clenched in fists, covering his pants pockets, and leaning forward as Lt. Hayward approaches him. § 87(2)(b) takes a few steps back from Lt. Hayward, with his hands at his sides, and is uttering something inaudible. As Lt. Hayward draws his OC spray, § 87(2)(b) moves his hands away from his sides ever so slightly. Lt. Hayward then discharges the OC-spray in § 87(2)(b)'s direction. § 87(2)(b) ducks and covers his head from the blast and then flees the location.

Lt. Hayward and PO Nicosia pursue § 87(2)(b) on foot. Individuals in the background can be heard encouraging § 87(2)(b) to run.

### **Field Work**

On July 9, 2012, field work was conducted at Cleveland Street and Jamaica Avenue and also at Warwick Street and Ridgewood Avenue in Brooklyn. Photos were taken of the locations and twelve canvass letters were left along Warwick Street. The undersigned investigator spoke with the occupants of four different residences in the area who had no knowledge of the incident.

### **NYPD Statements:**

#### **Subject Officer: LIEUTENANT JOSEPH HAYWARD**

- *Lt. Hayward is a § 87(2)(b)-old white male with brown hair and brown eyes. He is 5’7” tall and weighs 185 pounds.*
- *On March 23, 2012, Lt. Hayward worked from 3:00 p.m. to 1:00 a.m. He was dressed in uniform and assigned as the Impact Lieutenant in the 75<sup>th</sup> Precinct with PO William Bubeck. They were in an unmarked tan Ford Focus, # 1656.*

### **Memo Book**

At 6:30 p.m., 10-85 (request for additional units) by Impact Auto # 1. At 6:43 p.m., 9 arrested at Jamaica Avenue and Cleveland. § 87(2)(b). At 6:50 p.m., out of service to supervise arrest processing (Encl. 14A-14C).

### **CCRB Statement**

On February 14, 2013, Lt. Hayward was interviewed at the CCRB (Encl. 15A-15D). His statement is summarized below.

On March 23, 2012 at approximately 6:30 p.m., Lt. Hayward and PO Bubeck responded to a request for additional units at Jamaica Avenue and Cleveland Street in Brooklyn. The request for additional units was called by PO Joseph Nicosia and PO Anais Villegas who had a pick-up of a robbery by two juveniles, identified by the CCRB through investigation as § 87(2)(b) and § 87(2)(b).

Upon arrival at the location, Lt. Hayward observed a large crowd of about 70 people who had gathered as a result of the arrest. The crowd was blocking the street, blocking the sidewalk, and obstructing vehicular and pedestrian traffic. It was a “chaotic” situation and the crowd was interfering with the officers’ ability to place the defendants in the RMP.

The crowd had PO Nicosia’s and PO Villegas’s RMP surrounded and Lt. Hayward was fearful that someone was going to open the RMP door and let the arrestees out. Unidentified individuals in the crowd were yelling, “Get the hammers out” (which is street slang for handguns). Lt. Hayward did not see any firearms at this point.

Lt. Hayward recognized several of the individuals in the crowd, including § 87(2)(b) and § 87(2)(b) to be members of the Bloods gang. Lt. Hayward stated he knows this based on his three years of experience in the 75<sup>th</sup> Precinct and because he is “out there every night.” He further stated that the gang members actively recruit in Highland Park.

An unidentified female at the location, requested that Lt. Hayward remove a group of individuals that were on her property. Lt. Hayward gave the crowd four to five warnings to clear the street and sidewalk or they would be arrested. Lt. Hayward stated they would have been under arrest for OGA and disorderly conduct.

The crowd continued to yell, “Get your hammer out.” In fear that someone might start firing rounds, and because the crowd was being disorderly, the officers began to arrest individuals. At this point, there were no other officers at the location. As PO Nicosia and PO Bubeck were affecting arrests, several other individuals, three of whom were identified by the CCRB as § 87(2)(b) and § 87(2)(b) began to gather on the sidewalk again.

Lt. Hayward was shown a photograph of § 87(2)(b). He recognized him as being at the location and believed that § 87(2)(b) was arrested because he kept coming back onto the sidewalk. Lt. Hayward further stated that § 87(2)(b) hangs out with the gang members on Fulton Street. Lt. Hayward was shown a photo of § 87(2)(b) who he recognized from being at the location, but did not know what specifically he did. Lt. Hayward recognized § 87(2)(b)’s name from the arrest that day, but did not remember interacting with him on the date of incident.

Lt. Hayward gave § 87(2)(b) and § 87(2)(b) multiple orders to clear the sidewalk or they would be arrested, but they refused to comply. Again, people were saying, “Get your hammer out.” § 87(2)(b) then motioned as though he had a firearm in his waistband. Lt. Hayward indicated that § 87(2)(b) tucked his right hand into his waistband as though he had a firearm. Lt. Hayward demonstrated as though someone were going into a holster on their belt. Based on his experience, the statements from the crowd, and the motion by § 87(2)(b) Lt. Hayward believed him to have a firearm in his waistband. However, Lt. Hayward did not observe anything in § 87(2)(b)’s possession or clothing in the shape of a gun.

Lt. Hayward's intention at this point was to arrest § 87(2)(b) and the other individuals for returning to the sidewalk after being told numerous times to disperse. While § 87(2)(b) still had his hand in his waistband, Lt. Hayward pushed him from the front, near his back and right arm. Lt. Hayward stated the reason for the push was because he thought he had a firearm on him. Lt. Hayward stated he pushed him at least once, maybe twice. Lt. Hayward intended to arrest § 87(2)(b) and § 87(2)(b) as well, but there were not enough officers to assist him.

§ 87(2)(b) turned his back and said to Lt. Hayward, "You better watch your back." § 87(2)(b) then squared off with Lt. Hayward and put his hands up as though he wanted to fight. Lt. Hayward did not remember what the distance was between him and § 87(2)(b) at this point. Lt. Hayward pulled out his OC-spray and discharged half-of a blast toward § 87(2)(b) but did not hit him. At this point, Lt. Hayward was approximately five feet from § 87(2)(b). Lt. Hayward stated the purpose of discharging the OC-spray was to disable § 87(2)(b) who he thought had a firearm, so he could handcuff and arrest him.

§ 87(2)(b) ran from the scene and Lt. Hayward pursued on foot. § 87(2)(b) was much faster than Lt. Hayward and weaving in and out of cars. Lt. Hayward did not have eyes on § 87(2)(b) during the entire foot pursuit and lost track of him for approximately one block. Lt. Hayward believed that PO Nicosia also gave chase.

Lt. Hayward eventually caught up with § 87(2)(b) who was placed under arrest. Lt. Hayward did not remember how § 87(2)(b) was apprehended or what other officers responded to the location. Someone else had gone over the radio to request additional units who responded to the location, however, Lt. Hayward was not sure if the additional units responded to Jamaica Avenue and Cleveland Street, or to Warwick Street where § 87(2)(b) was apprehended. Lt. Hayward could not identify any of the additional units and did not know if any plainclothes officers responded.

Lt. Hayward did not see any officers point a gun at § 87(2)(b). Lt. Hayward did not see PO Nicosia punch, kick, or otherwise strike § 87(2)(b). He did not see any other officer do as much. He did not see any officer slap any of the arrestees. Lt. Hayward did not observe any injuries to the arrestees. Lt. Hayward did not hear an officer say to § 87(2)(b) or any of the other arrestees, "This is what I do for you stupid ass kids. If my fucking finger is broken, I'm going to smack you across the face and fuck you up," nor did he hear an officer say "Tell your mother she can suck my dick." Lt. Hayward did not hear any officer use any profanity during this incident.

After § 87(2)(b) was arrested, Lt. Hayward and other officers did a sweep of the entire area to look for a possible discarded firearm, but no firearm was recovered.

Lt. Hayward did not remember any officers being injured, nor did he remember completing any LOD paperwork as a result of this incident. Following the incident, Lt. Hayward returned to the stationhouse and was at the desk when everyone was being released with summonses. Lt. Hayward spoke with § 87(2)(b)'s mother, § 87(2)(b) who was very apologetic, as was § 87(2)(b). § 87(2)(b) did not complain at all about being hit with the OC-spray, ask to have his eyes washed out, or request medical treatment.

Lt. Hayward was shown the videos of this incident that were recorded via cell phone by § 87(2)(b) and § 87(2)(b). Lt. Hayward identified himself in the videos. He stated that the large black male with the red shirt, identified by the CCRB as § 87(2)(b) had been blocking the sidewalk and was one of the first individuals arrested. Lt. Hayward stated that § 87(2)(b) did not give the officers a difficult time and was compliant when he was told he was under arrest. § 87(2)(b) is the individual that PO Bubeck had arrested when another individual came up and pushed him.

Lt. Hayward pointed out that PO Nicosia and PO Bubeck were the two uniformed officers that had other individuals on the ground and under arrest. Lt. Hayward stated that it is his voice that can be heard yelling, "Get off the corner." Lt. Hayward stated that the videos only



crowd became more disorderly and started shouting at the officers, specifically saying, “Get the hammers.” PO Nicosia never saw anyone with a gun at the location.

PO Nicosia observed Lt. Hayward ordering individuals, identified as § 87(2)(b) and § 87(2)(b) to get off the corner. § 87(2)(b) refused to leave the corner so Lt. Hayward “shoved” him. PO Nicosia could not describe the nature or severity of the shove because he was still assisting PO Bubeck with placing an individual under arrest.

PO Nicosia was shown a photo of § 87(2)(b) but he did not recognize him. PO Nicosia believes that § 87(2)(b) was pepper-sprayed by Lt. Hayward. PO Nicosia did not witness § 87(2)(b) get pepper-sprayed, but he could smell it in the air.

Several individuals ran from the location and Lt. Hayward pursued them on foot. PO Nicosia ran after Lt. Hayward to provide backup and called for additional units. When PO Nicosia arrived at Warwick Street, the responding units already had § 87(2)(b) and § 87(2)(b) under arrest. PO Nicosia could not identify any of the responding officers.

PO Nicosia did not draw his gun at any point during this incident and did not see any other officer do so. PO Nicosia did not punch, kick, or otherwise strike § 87(2)(b) during this incident, nor did he see any other officer do as much. PO Nicosia did not witness any officer punch, kick, or strike any of the individuals that were arrested.

PO Nicosia did not hear an officer say to § 87(2)(b) “This is what I do for you, you stupid ass kids. If my fucking finger is broken, I’m going to smack you across the face and fuck you up.” He did not hear an officer say to § 87(2)(b) “Tell your mother she can suck my dick.” PO Nicosia did not use any profanity during this incident, nor did he hear any other officer do so.

None of the arrestees appeared injured, other than § 87(2)(b) who at the stationhouse, complained that his eyes burned from the pepper-spray. PO Nicosia did not personally interact with § 87(2)(b) but an unidentified officer assisted § 87(2)(b) with washing his eyes.

PO Nicosia was shown the videos taken by § 87(2)(b) and § 87(2)(b). PO Nicosia acknowledged that Lt. Hayward shoved § 87(2)(b) and pepper-sprayed him, but he reiterated that he did not see Lt. Hayward discharge his OC spray at the time of the incident, because he was assisting with the arrest of the two young men on the ground. PO Nicosia also pointed out that “Get the hammers” can be heard on the video.

**Subject Officer: OFFICER ROBERT MAYER**

- *PO Mayer is a § 87(2)(b)-old white male with brown hair and blue eyes. He is 5’9” tall and weighs 180 pounds.*
- *On March 23, 2012, PO Mayer worked from 5:30 p.m. to 2:05 a.m. He was dressed in plainclothes and assigned to Anti-Crime in the 75<sup>th</sup> Precinct with PO David Grieco. They were in an unmarked black Chevrolet Impala, # 9992.*

**Memo Book**

PO Mayer did not prepare any memo book entries for this incident (Encl. 19A-19B).

**CCRB Statement**

On May 7, 2013, PO Mayer was interviewed at the CCRB (Encl. 20A-20B). His testimony is summarized below.

PO Mayer did not have any independent recollection of this incident. He was shown the OLBS for § 87(2)(b) and photos of § 87(2)(b) and § 87(2)(b) but the arrest paperwork did not aide his memory and he did not recognize § 87(2)(b) and § 87(2)(b).

PO Mayer was given an overview of the incident. Upon being given the overview, PO Mayer stated he “vaguely” remembered the incident. He remembered that Lt. Joseph Hayward called for additional units to the incident location. PO Mayer stated that when he responded to

the location, “everything was pretty much done.” PO Mayer did not affect any arrests and did not physically or verbally engage with any civilians or arrestees at the location. PO Mayer did not remember if he witnessed the arrests of any civilians at the location.

PO Mayer did not use any profanity toward any civilians, nor did he hear any other officer do as much. PO Mayer did not draw his weapon at the location, nor did he see PO Grieco or any other officer do so. Other than responding to the location, PO Mayer did not remember taking any further police action.

PO Mayer did not remember if any other members of the Anti-Crime Unit, including supervisor Sgt. Florencio Arquer, responded to the location.

**Witness Officer: OFFICER WILLIAM BUBECK**

- *PO Bubeck is a § 87(2)(b)-old white male with brown hair and hazel eyes. He is 5’11” tall and weighs 180 pounds.*
- *On March 23, 2012, PO Bubeck worked from 6:40 a.m. to 11:35 p.m. He was dressed in uniform and at 4:30 p.m., was assigned to Impact Overtime with Lt. Joseph Hayward in the 75<sup>th</sup> Precinct. They were in unmarked RMP # 1681.*

**Memo Book**

At 6:43 p.m., two under arrest at Jamaica and Cleveland. § 87(2)(b) § 87(2)(b).  
§ 87(2)(b) § 87(2)(b) § 87(2)(b) (Encl. 21A-21B).

**Online Booking Sheet**

The Online Booking Sheet prepared by PO Bubeck on March 23, 2012 indicates that § 87(2)(b) was arrested for § 87(2)(b).  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b) (Encl. 22A-22C).

**CCRB Statement**

On October 16, 2012, PO Bubeck was interviewed at the CCRB (Encl. 23A-23C). § 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

PO Bubeck and Lt. Hayward responded to the location to verify an arrest stemming from a robbery. PO Bubeck and Lt. Hayward exited their vehicle and attempted to disperse the crowd. One particular group of individuals, identified by the CCRB as § 87(2)(b) and § 87(2)(b) was told to disperse multiple times. An individual, identified by the CCRB as § 87(2)(b) § 87(2)(b) responded by saying, “Fuck you pig” and then spit on the ground right in front of the officers. § 87(2)(b) and another individual, identified by the CCRB as § 87(2)(b) were placed under arrest. While PO Bubeck was handcuffing § 87(2)(b) an individual, identified by the CCRB as juvenile § 87(2)(b), slapped PO Bubeck’s hand hard enough to the point where he lost his grip on § 87(2)(b) § 87(2)(b) ran from the location, but PO Bubeck caught him and placed him under arrest.

PO Bubeck did not see what specific actions Lt. Hayward took at the location because he was tending to his prisoner, § 87(2)(b). PO Joseph Nicosia was assisting PO Bubeck with § 87(2)(b) § 87(2)(b). PO Bubeck did not see what actions PO Villegas took at the location and did not even know she was there until after the incident. PO Bubeck did not see Lt. Hayward discharge his pepper-spray at the location.

PO Bubeck was shown a photo of § 87(2)(b) who he recognized because he was assigned his arrest and processed him at the stationhouse. PO Bubeck did not interact with § 87(2)(b) at the incident location however.

Several members of the crowd were yelling, “Get the hammers” and “who’s got the hammers.” Several individuals fled the location and additional officers were called to assist. PO Bubeck put § 87(2)(b) in his unmarked car and drove around the corner where he saw that several unidentified plainclothes officers from the 75<sup>th</sup> Precinct had apprehended and handcuffed individuals, identified by the CCRB as § 87(2)(b) and § 87(2)(b). PO Bubeck did not see PO Nicosia at this location.

PO Bubeck remained in his vehicle alone to guard § 87(2)(b) who was “running his mouth” and kicking the back of PO Bubeck’s seat. PO Bubeck stated that the unmarked vehicle does not have a cage, so he needed to remain with § 87(2)(b).

From his RMP, PO Bubeck did not see any officers draw their weapons or punch, kick, or otherwise strike any of the arrestees. PO Bubeck did not do as much. PO Bubeck did not say to any individual, “This is what I do for you stupid ass kids. If my fucking finger is broken, I’m going to smack you across the face and fuck you up.” PO Bubeck did not say to any individuals, “Tell your mother she can suck my dick.” PO Bubeck did not hear any other officer utter the aforementioned phrases. PO Bubeck did not use any profanity during this incident, nor did he hear any other officer do so.

At the stationhouse, PO Bubeck first spoke with § 87(2)(b) when he was upstairs in the juvenile area. PO Bubeck stated both he and PO Nicosia were joking around with him in a friendly manner and informed him that his mother would be there shortly to pick him up. None of the arrestees, including § 87(2)(b), appeared to have any injuries or complained of any injuries.

PO Bubeck was shown the video footage of this incident. He acknowledged seeing Lt. Hayward shove § 87(2)(b) and then discharge his pepper-spray, but stated he did not see it at the time of the incident. PO Bubeck stated it appeared as though § 87(2)(b) turned and squared off with Lt. Hayward as though he wanted to fight. PO Bubeck also pointed out that people can be heard shouting, “Get the hammers.”

#### **Witness Officer: OFFICER ANAIS VILLEGAS**

- *PO Villegas is a § 87(2)(b)-old Hispanic female with brown hair and brown eyes. She is 5’10” tall and weighs 140 pounds.*
- *On March 23, 2012, PO Villegas worked from 4:05 p.m. to 12:30 a.m. She was dressed in uniform and assigned to Impact Auto #3 with PO Joseph Nicosia.*

#### **Memo Book**

At 6:43 p.m., two under arrest for § 87(2)(a) Fam. Ct. Act § 381.3 § 87(2)(b) DOB: § 87(2)(b) § 87(2)(b) DOB: § 87(2)(b) (Encl. 24A-24C).

#### **CCRB Statement**

On October 17, 2012, PO Villgas was interviewed at the CCRB (Encl. 25A-25B). Her statement is summarized below.

On March 23, 2012, at approximately 6:43 p.m., PO Villegas arrested § 87(2)(b) and § 87(2)(b) for § 87(2)(a) Fam. Ct. Act § 263.1.2 at Cleveland Street and Jamaica Avenue in Brooklyn.

Lt. Joseph Hayward responded to the location and verified the arrests. Because there was a large crowd of approximately 20 people at the location surrounding the RMP, Lt. Hayward ordered PO Villegas to transport her prisoners to the stationhouse. She got into her RMP to

safeguard the arrestees. She did not see what specific actions PO Nicosia took at the location, but stated he did pursue some individuals on foot as they fled the area.

PO Villegas did not know PO William Bubeck. PO Villegas did not see what specific actions Lt. Hayward took at the incident location, but stated he also pursued individuals on foot. She did not remember seeing Lt. Hayward push or shove any civilians.

PO Villegas was shown photos of § 87(2)(b) and § 87(2)(b) but she did not recognize them. PO Villegas left Cleveland Street and Jamaica Avenue with an unidentified officer and transported § 87(2)(b) and § 87(2)(b) to the stationhouse. She did not respond to Warwick Street and does not know the circumstances of the other arrests made during this time.

PO Villegas was shown the videos taken by § 87(2)(b) and § 87(2)(b). Upon viewing the video taken by § 87(2)(b), PO Villegas remembered seeing the individual in the red shirt, identified as § 87(2)(b), yelling and screaming. PO Villegas did not have any interaction with § 87(2)(b) nor did she remember seeing any other officer interact with § 87(2)(b). PO Villegas acknowledged seeing Lt. Hayward shove § 87(2)(b) on the video, but stated she did not see it at the time of the incident. On the date of incident, PO Villegas saw Lt. Hayward take out his OC spray, but she did not see him discharge it. PO Villegas could not testify as to what actions § 87(2)(b) was taking when Lt. Hayward drew his OC spray. PO Villegas stated that one of her arrestees was trying to get out of the RMP at the time. PO Villegas acknowledged seeing Lt. Hayward discharge his pepper-spray in the video.

PO Villegas did not see any officer draw their weapon during this incident, nor did she see any officer punch, kick, or otherwise strike any individuals. PO Villegas did not hear any officers use any profanity during this incident.

**Witness Officers: OFFICERS STEPHEN BERARDI AND VINCENZO DIMARTINO**

- *PO Berardi is a § 87(2)(b)-old white male with brown hair and brown eyes. He is 6'2" tall and weighs 235 pounds.*
- *PO DiMartino is a § 87(2)(b)-old white male with brown hair and blue eyes. He is 5'11" tall and weighs 200 pounds.*
- *On March 23, 2012, PO Berardi and PO DiMartino worked from 5:30 p.m. to 2:05 a.m. They were dressed in plainclothes and assigned to the Anti-Crime Unit in the 75<sup>th</sup> Precinct. They were in an unmarked black Chevrolet Impala, # 884.*

**Memo Books**

PO Berardi's and PO DiMartino's memo books indicate that at 6:35 p.m., they responded to a 10-85 (request for additional units) at Cleveland, Jamaica to Arlington. There were seven under arrest by 75 Impact Lt. At 6:45 p.m., they resumed patrol (Encl. 26A-26C & 28A-28C).

**CCRB Statements**

On May 15, 2013, PO Berardi and PO DiMartino were interviewed at the CCRB (Encl. 27A-27B & 29A-29B). § 87(2)(g)

On March 23, 2012 at approximately 6:35 p.m., PO DiMartino and PO Berardi responded to a request by Lt. Joseph Hayward for additional units at Cleveland Street and Jamaica Avenue in Brooklyn to assist with a crowd condition. The officers were not sure to what exact location they responded. The officers did not know if they ever responded to Warwick Street.

PO DiMartino stated that he and PO Berardi exited their vehicle and dispersed the crowd, but PO Berardi did not remember if he exited the vehicle. The officers did not physically engage with any civilians at the location or assist in effecting any arrests, nor did they see any officers at the location affect any arrests. The officers did not remember seeing PO David Grieco or PO



Robert Mayer at the location. The officers did not know if their supervisor, Sgt. Florencio Arquer, was at the location.

The officers did not draw their guns at the location, nor did they see any other officer do so. The officers did not punch, kick, or otherwise strike any individuals at the location, nor did they see any other officer do so. The officers did not use any profanity toward any civilians at the location, or threaten anyone with the use of force, nor did they hear any other officer do so.

Other than dispersing the crowd, the officers took no further police action.

### **NYPD Documents**

#### **SPRINT Report**

SPRINT Report number F12897 indicates that at 6:35 p.m., a lieutenant called in a disorderly group at Jamaica Avenue and Cleveland Street. At 6:36 p.m., no further units were necessary at the location. At 6:42 p.m., arrest by an open designated unit (Encl. 30A-30D).

#### **Daily Vehicle Assignment Sheet and Fleet Services**

According to the daily vehicle assignment sheet from the 75<sup>th</sup> Precinct on March 23, 2012, unmarked vehicles numbers 9992, 393, 127, and 884 were assigned to the Anti-Crime Unit (Encl. 33A-33B). According to Fleet Services, vehicle number 393 is a gray Chevrolet Impala and vehicle number 127 is a Black Chevrolet Impala. There is no record of vehicle number 884 and 9992 (Encl. 39AD).

#### **Tour 3 Roll Call, 75<sup>th</sup> Precinct**

The tour three roll call from the 75<sup>th</sup> Precinct on March 23, 2012 shows that PO Grieco, and PO Meyer were assigned to vehicle number 393 and that PO Dimartino and PO Berardi were assigned to vehicle number 884.

#### **Command Log**

The Command Log from the 75<sup>th</sup> Precinct on March 23, 2012 indicates that § 87(2)(b) was logged into the stationhouse at 7:35 p.m. by PO Bubeck. His physical and mental appearance is listed as appearing normal. Force in the nature of OC spray and hands is listed as being used. The command log also indicates that § 87(2)(b) refused medical attention. At 10:20 p.m., § 87(2)(b) was released into the custody of his mother.

At 6:45 p.m., § 87(2)(b) was logged into the stationhouse by PO Nicosia. His physical and mental condition is listed as appearing normal. § 87(2)(b) was released with a summons at 8:40 p.m. (Encl. 32A-32U).

#### **Arrest for Incident and Disposition**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]  
[REDACTED]

### **Status of Civil Proceedings**

- § 87(2)(b) and § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming personal injuries, severe mental anguish, emotional distress, humiliation and embarrassment, loss of their civil rights and personal freedom and privacy; unnecessary expenses for false arrest, detainment, and imprisonment, including the necessity to retain counsel and seeking \$1,000,000 as redress (Encl. 37A-37U).
- On § 87(2)(b), § 87(2)(b) and § 87(2)(b) provided 50-h Hearing testimony in the matter (Encl. 9A-9AQ, 11A-11AL, & 12A-12Z). A lawsuit was filed on § 87(2)(b). As of May 17, 2013, the case is still pending.

### **Civilian Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[redacted]  
[redacted]
  - [redacted]  
[redacted]  
[redacted]
  - [redacted]  
[redacted]  
[redacted]
- [redacted]  
[redacted]
  - [redacted]  
[redacted]  
[redacted]  
[redacted]
  - [redacted]  
[redacted]  
[redacted]  
[redacted]

### **Civilians CCRB History**

- This is the first CCRB complaint filed by either § 87(2)(b) or § 87(2)(b) (Encl. 3A-3C).

### **Subject Officers CCRB History**

- PO Nicosia has been a member of the service for three years and there are no substantiated CCRB allegations against him (Encl. 2C).
- Lt. Hayward has been a member of the service for fourteen years and there is one substantiated CCRB allegation against him (Encl. 2A-2B):
  - In CCRB case number 201200559, an allegation of Abuse of Authority, premises entered and/or searched, was substantiated against Lt. Hayward. The Board recommended command discipline. To date, the NYPD has not issued the final disposition for this allegation.
- PO Mayer has been a member of the service for seven years and there is one substantiated CCRB allegation against him (Encl. 2D-2E):
  - In CCRB case number 201111996, an allegation of Abuse of Authority, premises entered and/or searched, was substantiated against PO Mayer. The Board recommended command discipline. The NYPD imposed instructions as a penalty.

## Conclusion

### Identification of Subject Officers

- Lt. Hayward acknowledged interacting with § 87(2)(b). Furthermore, § 87(2)(b) identified PO Nicosia by name and both Lt. Hayward and PO Nicosia by photo.
- PO Mayer acknowledged responding to a request for additional units at the incident location.

## Investigative Findings and Recommendations

### Allegation Not Pleaded

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### Allegation A: Force – At Jamaica Avenue and Cleveland Street, Lieutenant Joseph Hayward used physical force against § 87(2)(b)

§ 87(2)(b) alleged that he was pushed twice from behind by Lt. Hayward after being asked to leave the corner of Jamaica Avenue and Cleveland Street. § 87(2)(b) stated he immediately complied with Lt. Hayward's directives to leave the corner. § 87(2)(b) and the YouTube video footage corroborates § 87(2)(b)'s statement that he was told to move, was lightly pushed, then started walking away, at which time Lt. Hayward gave him a second, more forceful push in the back. Lt. Hayward acknowledged pushing § 87(2)(b) as a means to subdue him because he was under arrest at the time for § 87(2)(a) 160.50 [REDACTED]. Lt. Hayward stated he had told § 87(2)(b) numerous times to disperse, which he refused to do. Lt. Hayward further stated that he felt outnumbered and wanted to throw § 87(2)(b) off balance before arresting him.

According to Patrol Guide Procedure 203-11, only the amount of force necessary to overcome resistance will be used to effect an arrest (Encl. 1A-1B).

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

### Allegation B: Force – At Jamaica Avenue and Cleveland Street, Lieutenant Joseph Hayward used pepper spray against § 87(2)(b)

It is undisputed that Lt. Hayward used OC spray against § 87(2)(b). The video footage clearly shows Lt. Hayward discharging his OC spray in § 87(2)(b)'s direction and Lt. Hayward acknowledged doing so as a means to subdue § 87(2)(b) and place him under arrest. Lt. Hayward also stated that he used his OC spray because he believed § 87(2)(b) to be in possession of a firearm and was out-numbered by the crowd of civilians threatening the officers by encouraging the use of firearms.

According to Patrol Guide Procedure 212-95, the use of OC spray is proper when used to effect the arrest of a resisting suspect, for self-defense, or establish control of a suspect resisting arrest or attempting to flee from custody (Encl. 1C-1F).

§ 87(2)(g)

§ 87(2)(g)

**Allegation C: Force – At Warwick Street and Ridgewood Avenue, an officer pointed his gun at § 87(2)(b) and § 87(2)(b)**

**Allegation D: Force – At Warwick Street and Ridgewood Avenue, an officer used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that when he ran to Warwick Street and Ridgewood Avenue, he was stopped by unidentified plainclothes officers in an unmarked silver sedan. § 87(2)(b) alleged that one of the officers, a white male, pointed a gun at him and then tackled him to the ground. None of the officers interviewed in this case acknowledged doing as much, nor did they see any other officer do so.

§ 87(2)(b) provided a physical description of the subject officer and stated he was driving a silver vehicle. On April 2, 2013, § 87(2)(b) appeared at the CCRB and viewed photos of all white male officers assigned to Anti-Crime and Conditions in the 75<sup>th</sup> Precinct during the time of incident. § 87(2)(b) did not identify the subject officer from the photo viewing. § 87(2)(b) was scheduled to appear on the same date to view photos, but he failed to make the appointment.

Officers Stephen Berardi, Robert Mayer, and Vincenzo DiMartino, all white males and assigned to Anti-Crime on the date of incident, were interviewed by the CCRB. However, none of the officers acknowledged drawing their weapon during the incident, nor did they see any other

officer do so. Furthermore, all three officers testified that they were driving an unmarked black vehicle on the date of incident. None of the officers recognized § 87(2)(b) or acknowledged interacting with him.

§ 87(2)(g)

**Allegation E: Force – At Warwick Street and Ridgewood Avenue, an officer used physical force against § 87(2)(b)**

§ 87(2)(b) stated that after this incident, § 87(2)(b) told him that an officer allegedly slapped him in the face. § 87(2)(b) did not witness this allegation and no officer acknowledged doing so or seeing another officer do so. § 87(2)(g)

**Allegation F: Force – At Warwick Street and Ridgewood Avenue, Officer Joseph Nicosia used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that while he was handcuffed and on the ground, PO Nicosia kicked him a singled time in his shoulder. PO Nicosia denied kicking § 87(2)(b) and no other officer saw him do so. § 87(2)(b) did not sustain any injuries or seek medical treatment as a result of the alleged kick.

§ 87(2)(g)

**Allegation G: Discourtesy – At Warwick Street and Ridgewood Avenue, an officer spoke discourteously to § 87(2)(b) and § 87(2)(b)**

**Allegation H: Abuse of Authority – At Warwick Street and Ridgewood Avenue, an officer threatened § 87(2)(b) and § 87(2)(b) with the use of force.**

§ 87(2)(b) alleged that while he was seated in a police vehicle at Warwick Street and Ridgewood Avenue, an unidentified officer said to him, “This is what I do for you, you stupid ass kids. If my fucking finger is broken, I’m going to smack you across the face and fuck you up.”

§ 87(2)(b) further alleged that when he asked the officer to call his mother, the officer said, “Tell your mother she can suck my dick.” § 87(2)(b) alleged that while standing outside of an RMP on Warwick Street and Ridgewood Avenue, an unidentified officer said to § 87(2)(b) “If I broke my finger I’m going to fuck you up and punch you in the face.” § 87(2)(a) Gen.Mun. §50-H(3)

No officer acknowledged uttering the aforementioned phrases and no officer heard another officer do so.

§ 87(2)(g)

Furthermore, neither § 87(2)(b) nor § 87(2)(b) were able to provide any additional identifying information for the officer and § 87(2)(b) did not cooperate with this investigation. § 87(2)(b) was not able to identify the subject officer of this allegation through a photo array viewing and § 87(2)(b) failed to appear at the agency to view photos of potential subject officers. There is no further witness testimony or evidence available to identify the officer.

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]

§ 87(4-b) § 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
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[Redacted]  
[Redacted]

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date